

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

CC Docket No. 99-200

To: The Commission

**REPLY TO OPPOSITION
TO PETITION FOR RECONSIDERATION**

Verizon Wireless hereby replies, briefly, to portions of the "Opposition to Petitions for Reconsideration" filed by the California Public Utilities Commission ("California") on August 15, 2000. As discussed herein, Verizon Wireless urges the Commission to confirm that wireless carriers need not provide proof of state certification when seeking initial codes, since state entry regulation of wireless carriers has been preempted. The Commission should also mandate that states seeking access to confidential carrier numbering information must safeguard this data in accordance with FOIA exemption 4, given that this information is supplied by carriers exclusively pursuant to FCC policies and requirements.

Carrier Proof of Need for Initial Codes. In its Opposition, California responded to a WorldCom request for clarification of the type of proof of qualification required for initial codes. WorldCom had asked that the Commission standardize the "type of proof" required in each state or, in the alternative, "create a presumption that any proof sufficient in one state will also suffice in all other states." WorldCom Petition at 9-10. California states that it has no objection to standardizing the form of showing, such that a carrier would be required to submit "a certificate of public convenience and necessity or equivalent" for the state in which it is applying, but it

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does object to the notion that a carrier should be allowed to submit a certificate from one state to demonstrate its eligibility for codes in another state. California Opposition at 15.

California correctly notes that a carrier's showing of qualification for initial codes should demonstrate that the carrier is eligible to provide service in the location for which it is seeking initial codes. Accordingly, an Illinois certificate would not be a valid showing when seeking a code in California. A carrier seeking an initial code in a given state should be required to show that some or all of the territory of the rate center is within its authorized service area. The carrier's showing to this effect will not necessarily require a state certificate. As California says, a carrier should be required to show either a certificate "*or equivalent.*"

The documentation of a carrier's authority to provide service in a given location will vary, depending on whether it is a wireline or a wireless carrier. A state-issued certificate of public convenience and necessity may be required in the case of wireline carriers, but wireless carriers are exempt from state entry regulation, pursuant to 47 U.S.C. § 332(c)(3). Accordingly, *wireless carriers cannot be required to submit a state certificate*; they should be permitted to demonstrate their qualification by showing that they hold an FCC authorization to serve the relevant geographic area.

The *NRO Order* was somewhat ambiguous as to the type of documentation required, resulting in some confusion on this issue. Currently, NANPA requires only wireline carriers to show state certification, and it directs wireless carriers to show FCC authorization instead.¹ In addition, with respect to wireless carriers holding nationwide or regional licenses, this showing should only be required once, to minimize the burden on both carriers and the NANPA staff. In

¹ See NANPA, *NRUF (Form 502) – FAQ; Effects of the FCC's NRO Order on Code Administration* (Updated 8/16/00), <http://www.nanpa.com/relief_planning/nro_order.html>.

its reconsideration order, the Commission should eliminate any uncertainty on this issue and confirm that wireless carriers need not show state authorization, and that NANPA should establish a database of where each carrier is authorized, to minimize the need for repetitive filings.

Finally, California implies that a carrier seeking initial codes must submit its showing of qualification to the state commission. California Opposition at 15. Verizon Wireless disagrees. A carrier must make its showing to NANPA, not the state commission. The relevant state commission may, of course, review this showing and bring any issues to NANPA's attention, assuming the necessary confidentiality mechanisms are in place.

State Access to Confidential Data. Verizon Wireless showed in its petition for reconsideration that because states may act solely pursuant to federally delegated authority with respect to numbering administration, they are obliged to safeguard confidential data obtained in the course of their numbering responsibilities in accordance with the exemptions from disclosure established in the Freedom of Information Act.² California does not contest the principle that states can perform number administration tasks only pursuant to a delegation of authority from the FCC. Nevertheless, California maintains that state commissions "have independent authority

² In particular, states must protect confidential data pursuant to FOIA Exemption 4, which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). California disputes whether carriers' number use information is a "trade secret" or should instead be considered "commercial or financial information." California Opposition at 13. Accordingly, Verizon Wireless clarifies that it used the term "trade secret" as a short form for the entire subject matter of Exemption 4. Indeed, California does not question the inclusion of carrier-specific number use information within this category. In sum, whether it constitutes a trade secret, confidential commercial information, or confidential financial information does not matter, since all are equally subject to protection from disclosure. Accordingly, any state collecting such information pursuant to an FCC delegation of authority is obliged to secure the information so as to protect its confidentiality. In many cases, this will not be difficult in light of existing state laws protecting data. *See, e.g.*, California Public Utilities Code § 583. On reconsideration the Commission should require states to certify that they accept the obligation to protect confidential data in accordance with FOIA Exemption 4.

over carriers, including the ability to obtain data carriers consider confidential.” California Opposition at 11.

The states’ “independent authority” to obtain data from the carriers in their jurisdiction based on state law cannot extend to subject matters where the states’ authority has been preempted. Congress has occupied the field with respect to numbering:

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

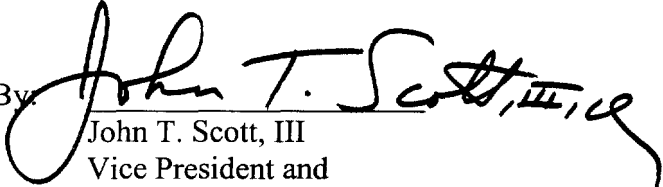
47 U.S.C. § 251(e)(1). Congress’s assertion of “exclusive jurisdiction” necessarily displaces any authority conferred independently on state commissions under state law. All such independent authority has been preempted by Congress. As a result, state commissions have authority over numbering matters, including data collections concerning numbering, only to the extent the Commission delegates federal authority to them pursuant to the direction of Congress.³ On reconsideration, the Commission should make clear that state laws cannot serve as a source of

³ In recognition of the statutory preemption, California acknowledges that the *NRO Order* limits states’ independent authority to require regular reports from carriers. See California Opposition at 12. Moreover, due to the *NRO Order* and the availability of biennial utilization and forecast data, California has recently eliminated a number of periodic reporting requirements that it had previously imposed on carriers. See *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service*, Rulemaking 95-04-043, *Administrative Law Judge’s Ruling Revising Prior Ruling Regarding Ongoing Code Utilization Reporting*, at 2 (Calif. PUC, ALJ Pulsifer, June 6, 2000) (acknowledges that the *NRO Order* “foreclos[es] the states from imposing ongoing reporting requirements”).

independent jurisdiction over numbering matters, including reporting requirements, since Congress has precluded the independent exercise of state authority in this area.

Respectfully submitted,

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